

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Commercial Law Division**

2016/COM/lab/00047

BETWEEN

T'SHURA AMBROSE

Plaintiff

AND

CENTRAL BANK OF THE BAHAMAS

Defendant

Before: The Honourable Justice Ian Winder

Appearances: Obie Ferguson Jr. for the Plaintiff
 Camille Cleare for the Defendant

15 January 2019

JUDGMENT

WINDER, J

This is the defendant's summons seeking to have these proceedings stayed in favor of arbitration.

1. The underlying proceedings is a labour dispute where the plaintiff claims that a promotion exercise was not conducted in accordance with the terms of an Industrial Agreement dated 15 March, 2013, between the Central Bank of The Bahamas and the Union of Central Bankers ("the Industrial Agreement"). The defendant has applied by Summons dated 5th August, 2016 for an Order, pursuant to Section 9(1) of the Arbitration Act, 2009 and under the Inherent jurisdiction of the Court that all further proceedings in the matter be stayed on the grounds that the matters in dispute between the parties and/or raised by this action are issues within the purview of Article 65 of the Industrial Agreement entered into between the Union of the Central Bank and the Defendant.
2. The application is supported by the Affidavit of Lakeisha Strachan filed herein on the 16th March, 2017 which provides, in part, as follows:
 4. I am advised by Mrs. Deborah Ferguson, the Director of the Defendant's Human Resources Department, and verily believe that the Plaintiff's employment with the Defendant was subject to the Agreement. A true copy of the Agreement is now shown to me and exhibited hereto as "LS-1". Article 65 of the Agreement makes provision for a referral to binding private arbitration of any disputes arising from the terms of the Agreement as follows:

65.1 Notwithstanding the provisions of Article 22 and 23 of the Agreement, the Bank and the Union agree to the establishment of the following procedure for binding arbitration of disputes arising from the conditions of employment or the application of the terms or conditions of employment.
 5. The aforesaid Article continues by requiring the complaining party to any dispute to give the other party written notice of the complaint. Upon notice of the complaint to the other side, the dispute is then to be referred initially to a Review Committee, and if unresolved, then further referred to a Private Binding Arbitration Tribunal. Mrs. Ferguson has further advised me, and I verily believe that contrary to the provisions of Article 65 of the Agreement, the Plaintiff failed to proceed with the referral to private binding arbitration as stipulated in the Agreement, or at all.

6. I am unaware of any provisions of the Agreement that are inconsistent with, or would otherwise allow the Plaintiff to bypass the binding arbitration procedure specified at Article 65 thereof. I therefore verily believe that the Plaintiff's conduct in commencing the instant Action as opposed to proceeding with arbitration, as she was obligated to do, is a violation of the terms of the very Agreement which she is now seeking to enforce. In the premises, I depose to this Affidavit in support of the Defendant's application to compel the Plaintiff to refer this dispute to the private arbitration process set out in the Agreement.

3. The plaintiff's filed an affidavit in response which provides as follows:

5. That in response to the Affidavit filed by Ms. Lakeisha Strachan on the 16th March 2017 and received by my Attorneys Obie Ferguson & Co. on the 22nd June 2017, in which Ms. Strachan states Ms. Ferguson advise that "contrary to the provision of the Agreement the plaintiff failed to proceed with the referral to Private Binding Arbitration as stipulated in the Agreement or at all" at paragraph 5.

6. That in response I refute the allegations that I failed to proceed with the referral to private binding arbitration. That Ms. Deborah Ferguson, the Governor nor the Review Committee at the Central Bank of the Bahamas never recommended private binding arbitration to me or my Attorney Mr. Obie Ferguson and never referred the matter to private binding arbitration within the specified time as stipulated by Article 65.2.3 of the Industrial Agreement which states "if an amicable solution is not reached within fourteen (14) days of receipt of the notice or such longer time as both parties may agree, the Review Committee shall recommend that the matter be referred to private arbitration. The first meeting of the Private Binding Arbitration Tribunal shall take place within (30) days of referral by the Review Committee."

7. That additionally after the Review Committee meeting of 4th March 2016 & conciliation meetings at the Department of Labour on the 20th April, 2016 and 18th May, 2016 the Review Committee failed again to refer the matter to Private Binding Arbitration.

8. That further the Review Committee failed to recommend Arbitration after my attorney Mr. Obie Ferguson wrote to the Governor, John Rolle in a letter dated 27th May, 2016 seeking resolution of the matter.

9. That on the 20th April, 2016 I attended a meeting at the Department of Labour with my Attorney Mr. Obie Ferguson.

Ms. Deborah Ferguson and Ms. Nakessa Beneby attended the meeting and presented a case for the Bank. During the meeting, the Department of Labour advised all parties involved in the dispute to come to an agreement and to return on the 18th May, 2016 to advise the agreement reached.

...

19. That on the 4th March 2016 a meeting was held by the Review Committee in which I attended pursuant to Article 65.2.1 of the Industrial Agreement. The Committee was comprised of the following persons, representatives from the Bank, Mr. Michael Lightbourne, Deputy Governor, Ms. Deborah Ferguson, Human Resources Manager, Mr. Derek Rolle, Manager of Banking, and representatives from the Union of the Central Bank, Ms. Theresa N. Thompson, President, Mr. Sean Swain, Vice President, and Ms. Allison Middleton, Secretary.

...
25 That I am humbly seeking that this Honorable Court dismiss the defendants Summons of the 5th August, 2016 and Affidavit of 16th March 2017 for the following reasons:

- That I did abide by the Industrial Agreement of The Central Bank and that I went through a Review process with the Review Committee followed by Conciliation Meetings with Department of Labour. However no resolution was reached.
- That my Attorneys Obie Ferguson and Co., in an attempt to settle the matter wrote a letter to the Governor Mr. John Rolle on the 7th April, 2016 and advised the Governor to resolve the matter in the four (4) corners of The Central Bank of The Bahamas and requested a meeting with the Governor to discuss the same.
- That the Governor, Mr. John Rolle wrote a letter to my Attorney, Mr. Obie Ferguson on the 11th April, 2016 and stated that the Bank will proceed in keeping with the trade dispute notice received on the matter from the Department of Labour. He further stated that the Bank has exhausted in-house hearings on the matter.
- That Mr. John Rolle, Governor of The Central Bank response to the letter in which he stated in-house hearings was exhausted is incorrect in that he did not use the Arbitration. Instead, he chose not to invoke the provision of Article 65 of the Industrial Agreement.
- That I went to the Labour Board along with my Attorneys for Conciliation hearings on the 20th April, and 18th May, 2016 as stated in paragraph 16 of my Affidavit filed on the 15th July, 2016 and that my Attorneys tried to resolve the matter and that no resolution was reached. Therefore, I had no recourse but to instruct my Attorneys Obie Ferguson and Co. to please put me in the Honorable Courts hands after Management of The Central Bank was not willing to resolve the matter in a fair and amicable manner.
- That the Labour Officer Ms. Tanya Sherman requested that all parties concern come up with a remedy to the problem and Ms. Deborah Ferguson, Human Resources Manager at the Central Bank refused to come to an agreement when conciliation meetings were held at the Department of Labour to remedy the matter which is in dispute during on May 18, 2016, in follow up meeting.

4. The defendant says that the Court's task is to determine whether the terms of the Industrial Agreement constitutes a binding Arbitration Agreement between the parties, requiring the issues raised in the Originating Summons to be referred to Arbitration.

5. Section 9 of the Arbitration Act ("the Act"), which provides:

- (1) A party to an arbitration agreement against whom legal proceedings are brought (whether by way of claim or counterclaim) in respect of a matter which under the agreement is to be referred to arbitration may (upon notice to the other parties to the proceedings) apply to the court in which the proceedings have been brought to stay the proceedings so far as they concern that matter.
- (2) An application may be made notwithstanding that the matter is to be referred to arbitration only after the exhaustion of other dispute resolution procedures.
- (3) An application may not be made by a person before taking the appropriate procedural step (if any) to acknowledge the legal proceedings against him or after he has taken any step in those proceedings to answer the substantive claim.
- (4) On application under this section the court shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed.

6. Section 2 of the Act defines an Arbitration Agreement as:

"...an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship whether contractual or not and may be in the form of an arbitration clause in a contract or in the form of a separate agreement."

7. Having considered the matter I am satisfied that the provisions of the industrial agreement required arbitration, if binding, are now inoperative having regard to the actions (inaction) of the parties. Such a determination is permitted by Section 9(4) of the Arbitration Act. The relevant provision of the Industrial Agreement is article 65.2 which provides:

65.2 In the event of such a dispute, the party or complaining parties shall give to the other party written notice, whereupon the following procedure shall apply:

65.2.1 The dispute shall be referred to a Review Committee consisting of a representative from each of the Bank and the

Union-neither of whom shall have had any previous dealing with the dispute.

65.2.2 The Review Committee shall meet with the parties in dispute or their representative and shall make every effort to resolve the matter amicably.

65.2.3 If an amicable solution is not reached within fourteen (14) days of receipt of the notice-or such longer time as both parties may agree-the Review Committee shall recommend that the matter be referred to private arbitration. The first meeting of the Binding Private Arbitration Tribunal shall take place within thirty (30) days of referral by the Review Committee. [Emphasis added]

8. The plaintiff's case, which I accept, is that the review committee which is required to make the referral to arbitration as required by Article 65.2.3 was not constituted in accordance with the terms of the industrial agreement and therefore incapable of making a valid appointment. In any event no such referral to arbitration was made notwithstanding the recognition of the Governor that the internal process has been exhausted since 2016. See letter dated 11 April 2016.
9. The conduct of the parties also appears to recognize that the arbitration process was inoperative. The plaintiff filed a notice of a trade dispute however the defendant, instead of seeking to have the matter proceed to arbitration, indicated that it was await the outcome of the legal process and "*proceed in keeping with the trade dispute notice received on the matter from the Department of Labour*". It is only following the institution of these proceedings that the defendant now raises arbitration notwithstanding there has been no reference to any arbitration.
10. In all the circumstances therefore, the Summons is dismissed with costs.

Dated the 2nd day of April 2019


Ian Winder
Justice